

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE SIXTEENTH DAY OF SEPTEMBER
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE M.VENKATESWARA REDDY

WRIT PETITION No.14326 OF 2005

Between:

A Paper Clipping "Times of India" published on 01.07.2005,
Hyderabad Edition, containing news under the caption
"Police 'Torture' drives man mad, and others.

..... PETITIONER

AND

The Station House Officer, Golconda Police Station,
Hyderabad, and others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE

J.CHELAMESWAR

AND

THE HON'BLE MR JUSTICE

M.VENKATESWARA REDDY

WRIT PETITION No.14326 OF 2005

O R D E R

(Per Sri Justice J.Chelameswar)

This is a writ petition taken up on the basis of a news item published in the Times of India dated 01.07.2005. The substance of the news item is that the police personnel of Golconda Police Station, Hyderabad City particularly the Detective Sub-Inspector of Police-P.Shankar Yadav picked up one Shiva Kumar Chary, Goldsmith, for allegedly purchasing the stolen property (gold ornaments) and tortured without producing him before any Court.

The matter was admitted on 26.07.2005. Pursuant to the notice, a counter-affidavit is filed by the Respondent No.4-Deputy Commissioner of Police in the writ petition. It is admitted in the counter-affidavit that the 2nd respondent picked up the above-mentioned Shiva Kumar Chary and illegally detained him for a period of five days. It is also admitted in the counter-affidavit that the said Shiva Kumar Chary and another Sekharaiah Chary were taken to Golconda Police Station.

On a perusal of the news item published in the Times of India, the 5th respondent-The Commissioner of Police, Hyderabad City, Hyderabad, ordered an enquiry into the said incident by the Assistant Commissioner of Police, Asif Nagar Division. The said Assistant Commissioner in turn enquired into the matter and submitted a report on 01.07.2005 i.e. even prior to the date of taking up of the present writ petition. According to the counter-affidavit, the Assistant Commissioner of Police submitted a report that the 2nd respondent herein "subjected Mr.Shiva Kumar Chary to small force for extracting the truth". It is further stated in the counter-affidavit that by proceedings dated 06.07.2005 the 2nd respondent herein is kept under suspension on the basis of the report of the Assistant Commissioner of Police, referred to earlier.

Subsequent to the taking up of the writ petition by this Court, an application in WPMP No.20092 of 2005 was filed by the above-mentioned Shiva Kumar Chary and Sekharaiah Chary seeking leave of the Court for intervening in the taken up writ petition. Leave was granted by an order of this Court dated 18.07.2005.

Learned counsel for the petitioners Mr.Srinivas Reddy argued that in view of the admissions made in the counter-affidavit, it is clear that it is a case where there is violation of human rights of the 2nd petitioner, and, consequentially this Court is duty bound to give appropriate directions for payment of pecuniary compensation by the State in the light of the decision reported in **D.K.BASU V/s. ASHOK K.JOHRI**. At para 42 of the said judgment, the Supreme Court held as follows:

"42..... These statutory provisions are, however, inadequate to repair the wrong done to the citizen. Prosecution of the offender is an obligation of the State in case of every crime but the victim of crime needs to be compensated monetarily also. The Court, where the infringement of the fundamental right is established, therefore, cannot stop by giving a mere declaration. It must proceed further and give compensatory relief, not by way of damages as in a civil action but by way of compensation under the public

law jurisdiction for the wrong done, due to breach of public duty by the State of not protecting the fundamental right to life of the citizen. To repair the wrong done and give judicial redress for legal injury is a compulsion of judicial conscience.”

Regarding the nature of the liability of the State to pay compensation, the Supreme Court further held at para 55 as follows:

“55. Thus, to sum up, it is now a well accepted proposition in most of the jurisdiction, that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants and the State is vicariously liable for their acts. The claim of the citizen is based on the principle of strict liability to which the defence of sovereign immunity is not available and the citizen must receive the amount of compensation from the State, which shall have the right to be indemnified by the wrong doer. In the assessment of compensation, the emphasis has to be on the compensatory and not on punitive element. The objective is to apply balm to the wounds and not to punish the transgressor or the offender, as awarding appropriate punishment for the offence (irrespective of compensation) must be left to the Criminal Courts in which the offender is prosecuted, which the State, in law, is duty bound to do. The award of compensation in the public law jurisdiction is also without prejudice to any other action like civil suit for damages which is lawfully available to the victim or the heirs of the deceased victim with respect to the same matter for the tortuous act committed by the functionaries of the State. The quantum of compensation will, of course, depend upon the peculiar facts of each case and no strait-jacket formula can be evolved in that behalf. The relief to redress the wrong for the established invasion of the fundamental rights of the citizen, under the public law jurisdiction is, thus, in addition to the traditional remedies and not in derogation of them. The amount of compensation as awarded by the Court and paid by the State to redress the wrong done, may in a given case, be adjusted against any amount which may be awarded to the claimant by way of damages in a civil suit.”

Coming to the question of quantum of compensation, the Supreme Court pointed out that it depends upon the facts of the each case and no strait-jacket formula can be evolved.

In the circumstances, having regard to the admitted fact that 2nd petitioner-Shiva Kumar Chary was illegally detained for a period of five days and having regard to the fact that there is no specific information regarding the nature of injuries suffered by the said Shiva Kumar Chary, we deem it appropriate that the said Shiva Kumar Chary be paid public law damages for an amount of Rs.10,000/- within a period of two weeks from the date of receipt of a copy of this order. It goes without saying that the direction given today does not derogate the rights of the said Shiva Kumar Chary to take up appropriate proceedings against the

2nd respondent, either, civil or criminal. We also make it clear that having regard to the appropriate action initiated by the 5th respondent and the candid statement made in the counter-affidavit, it would be open for the State to recover the said amount of Rs.10,000/- from the 2nd respondent, after giving him an opportunity of hearing in this regard.

Accordingly, the writ petition is disposed of.

JUSTICE J.CHELAMESWAR

16th SEPTEMBER, 2005 JUSTICE M.VENKATESWARA REDDY

PGS

**THE HON'BLE MR JUSTICE
J.CHELAMESWAR
AND
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